

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JULIO FIGUEROA,

Plaintiff,

v.

**9:13-CV-48
(FJS/ATB)**

MS. HOLMES, Registered Nurse, Upstate Correctional Facility; MS. N. SMITH, Nurse Administrator, Upstate Correctional Facility; and MR. PARMER, Nurse Practitioner, Upstate Correctional Facility;

Defendants.

APPEARANCES

OF COUNSEL

JULIO FIGUEROA

05-A-4469

Upstate Correctional Facility

P. O. Box 2001

Malone, New York 12953

Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

The Capitol

Albany, New York 12224

Attorneys for Defendants

CHARLES J. QUACKENBUSH, AAG

SCULLIN, Senior Judge

ORDER

Currently before the Court is Magistrate Judge Baxter's September 20, 2013 Report-Recommendation, in which he recommended that this Court grant Defendants' motion to dismiss for failure to state a claim with regard to Plaintiff's retaliation claims and deny their motion with respect to Plaintiff's claim that Defendants were deliberately indifferent to his serious medical needs. *See* Dkt. 25 at 12. Plaintiff filed a letter dated October 2, 2013, stating that he

does not object to the September 20, 2013 Report-Recommendation. *See* Dkt. 26. Defendants did not file any objections to these recommendations.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Baxter's September 20, 2013 Report-Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Baxter's September 20, 2013 Report-Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

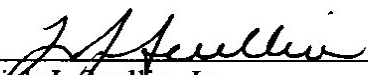
ORDERS that Defendants' motion to dismiss is **GRANTED** with respect to Plaintiff's retaliation claims and **DENIED** with respect to Plaintiff's claim that Defendants were deliberately indifferent to his serious medical needs; and the Court further

ORDERS that this matter is referred to Magistrate Judge Baxter for all further pretrial matters; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: October 18, 2013
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge